

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 497 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

SHARMISHTHA SATISHKUMAR PATEL

Versus

MINOR MALAV SATISHKUMAR PATEL

Appearance:

1. Appeal from Order No. 497 of 2002
MS SM AHUJA for Petitioner No. 1
MR PRADEEP PATEL for Respondent No. 1
MR DAXESH T DAVE for Respondent No. 2
-

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 10/04/2003

ORAL JUDGEMENT

1. Heard ld. counsel Ms. Ahuja for the appellant original defendant no.2 and Shri Ambalal Ranchhodbhai

Patel who appeared posing himself as the guardian of minor Malav Satishkumar Patel- Respondent No.1, aged about 12 years who at present is studying in Rajkumar College, Rajkot, and ld. counsel Mr. Daxesh Dave appearing for respondent no.2- original defendant no.1 Life Insurance Corporation of India (LIC of India for short).

2(i). That original plaintiff Malav (minor) Satishkumar Patel (Respondent No.1 herein) is the step-son of the appellant herein- original defendant no.2. The husband of the present appellant and father of minor Malav got married with the appellant after the death of his first wife. After the death of Satishkumar Patel, difference between the family members and especially with grand father of minor Malav cropped up. Satishkumar had purchased 4 different policies from respondent no.2 herein LIC bearing Policy Nos. 83303068, 83303069, 83303070 and 83303071 each of sum assured of Rs.1 Lakh. For all said policies, husband Satishkumar had appointed the present appellant Sharmisthaben as Nominee and, therefore, she is entitled to recover the amount of sum assured in all the four policies.

2(ii). LIC of India, in terms of the policy and contract and in view of relevant statutory provisions, decided to part with the sum assured in favour of the Nominee namely the present appellant, but before LIC of India could part with said amount and pay it to the present appellant, a suit came to be filed by minor Malav through his guardian and best friend (grand father) Shri Ambalal R.Patel in City Civil Court, Ahmedabad being Civil Suit No. 5381/1999 and an ex-parte ad-interim prohibitory order was obtained on 21.10.1999. During the course of hearing of the said suit, ld. Principal Judge, City Civil Court, Ahmedabad directed LIC of India to deposit the amount payable under the said policies i.e. Rs.5,14,800-00 with the Court vide order dated 8.4.2000 and in compliance with the said order, respondent No.2 LIC of India deposited the said amount with the Nazir of City Civil Court, Ahmedabad.

3. According to the appellant, she being legally wedded wife and Class:I heir of deceased husband Satishkumar Patel and she being Nominee, the entire amount should have been paid to her by LIC of India and in view of the nature of relations between the parties, ld. Principal Judge, City Civil Court, Ahmedabad at least ought to have granted or allowed to withdraw 50% amount so deposited to the present appellant. However, vide order dated 4.10.2000, below application Exh.6, the ld. Principal Judge, City Civil Court ordered that the amount deposited with the Court by LIC of India be invested in

Fixed Deposit (F.D.R. with cumulative effect) and that too in the name of Nazir of the Court with any nationalised bank initially for a period of 7 years. It is further ordered, that if by that time the suit is not disposed of, to extend the term of the Fixed Deposit accordingly after obtaining proper order from the Court.

4. I have carefully considered the nature of averments made in the application exh.6 and subsequent orders passed by the lower Court and especially order dated 4.10.2000 passed below application exh.6, mainly under challenge.

5. After service of notice, Shri Ambalal R. Patel has appeared and has submitted his point of view in the matter in writing (in vernacular Gujarati) and the same is taken on record. I have considered the contents thereof. Most of the submissions made by Shri Patel are based on personal emotions and are his personal feelings qua the structure of the family complaining against the appellant -widow of his son- and values of life as per his personal approach and understanding. Mother of the deceased Satishkumar is not before the Court. Said Shri Ambalal Patel himself is not Class:I heir. It is not a matter of dispute that deceased Satishkumar has died intestate. The status of the present appellant is she being legally wedded wife and now widow of deceased Satishkumar and, therefore, Class:I heir in view of the provisions of Codified Hindu Law of Succession, is not in dispute. Minor Malav at present is studying in Rajkumar College, at Rajkot and according to Shri Ambalal Patel, he is spending huge amount over the education of his grand son Malav and for his all-round development. Because of some erroneous decisions taken by the deceased in running business, he is fastened with the liability of large sum and, therefore, the appellant should not be paid any amount, is also one of his arguments. These submissions have no legal bearing. No third party has claimed any amount till date in the court of law. The appellant wife, even otherwise, is entitled to 50% of the sum assured and released by LIC of India and deposited with the Nazir of City Civil Court, Ahmedabad. However, as the appellant has approached this Court pending the final disposal of the said suit, the impugned order dated 4.10.2000 passed by the ld. Principal Judge, City Civil Court, Ahmedabad can be modified as submitted by Ms. Ahuja with the direction to expedite the hearing of the suit and with further directions.

6. As the appellant has agreed to receive the 50% amount of interest, so, the appropriate directions can be issued by this Court. Hence, City Civil Court and Nazier to encash the Fixed Deposit made as per the order of City Civil Court, prematurely and collect the amount of

interest accumulated on the said Fixed Deposit and to disburse the accumulated interest amount equally (viz. 50% amount to each), between two Class:I legal heirs viz. between appellant widow of deceased Satishbhai and Minor Malav. Amount to be paid to minor Malav can be paid to his guardian Shri Ambalal Patel, if he so desires to receive the said amount, for the betterment and benefits of minor Malav. Further directions can be issued to Nazir of City Civil Court to again invest aforesaid amount of Rs.5,14,800/ in the Fixed Deposit in the name of Nazir with a Nationalised Bank in FDRs for a period of 7 years with a directions to receive quarterly interest from the said Bank who in turn can pay aforesaid amount of interest in equal proportion to the appellant as well as to the minor in the manner as aforesaid (i.e. 50% each).

6-A. Under the circumstances aforesaid, I accept the submissions of Ms. Ahuja that the order passed by the Lower Court dated 4.10.2000 is highly prejudicial and unjustified amounting to implied denial of a right of the widow to have legitimate share in the movable and immovable properties of her deceased husband. Even for the sake of arguments it is accepted that there was some dispute between the husband and wife at some point of time, then also that by itself would not disentitle the wife from her legitimate right as a Hindu widow. Hence, this appeal from order requires to be allowed partly. However, no formal order quashing the orders dated 21.10.1999 and 8.8.2000 is required to be passed. As the say on behalf of the plaintiff is not found acceptable that minor Malav is entitled to have entire sum, the order dated 4.10.2000 requires to be modified to the extent aforesaid. It is clarified that modification suggested by Ms. Ahuja is without prejudice to the right and contentions of defendant widow.

7. For the reasons aforesaid, this AO is partly allowed. The impugned order dated 4.10.2000 is hereby modified to the extent and it is hereby ordered that the Nazir of City Civil Court shall encash the Fixed Deposit of Rs.5,14,800-00 made as per the order of City Civil Court, prematurely and collect the amount of interest accumulated on the said Fixed Deposit and thereafter, shall disburse the accumulated interest amount equally viz. 50% amount to each between two Class:I legal heirs viz. between appellant widow of deceased Satishbhai and Minor Malav. Amount to be paid to minor Malav shall be paid to his guardian Shri Ambalal Patel, if he so desires

to receive the said amount and if paid, the said amount shall be spent for the betterment and benefits of minor Malav. It is further direction that Nazir of City Civil Court thereafter shall again invest aforesaid amount of Rs.5,14,800/ in the Fixed Deposit in the name of Nazir in any Nationalised Bank for a period of 7 years with a directions to the Bank concerned to pay quarterly interest to Nazir who in turn shall pay aforesaid amount of interest in equal proportion to the appellant as well as to the minor Malav as observed above. Amounts to be paid to minor Malav shall be paid to Shri Ambalal Patel, guardian of minor Malav, if he is so desirous to receive such payment. If Shri Ambalal Patel is not desirous to receive such amount of interest, then the same shall be invested in any Nationalised Bank by way of Fixed Deposit by obtaining appropriate administrative orders from the Presiding Judge of the concerned Court. In view of the nature of disputes between the parties, the trial Court concerned is ordered to expedite the hearing of the suit and decide the same on merits as early as possible and preferably within One Year from the date of receipt of writ of this order.

AO is allowed accordingly. No costs.

Direct Service is permitted.

10.4.2003 [C.K. BUCH, J]

*rawal